

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201710310	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/06/2017 9:00 PM	Location of Incident: Opposite of 854 Myrtle Avenue	Precinct: 79	18 Mo. SOL 6/6/2019	EO SOL 6/6/2019	
Date/Time CV Reported Wed, 12/06/2017 9:30 PM	CV Reported At: IAB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 12/13/2017 12:27 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Bomparola	15054	955761	079 PCT
2. POM Mohamed Elhanafi	15082	955897	079 PCT
3. POM Moses Lebron	09546	956831	079 PCT
4. POM Clint Elie	07909	955899	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Greydy Mercedes	09619	956926	079 PCT
2. POM James Lester	942	956839	079 PCT
3. POM Devin Fitzgerald	12999	955919	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Bomparola	Abuse: Police Officer Anthony Bomparola stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Anthony Bomparola	Discourtesy: Police Officer Anthony Bomparola spoke discourteously to § 87(2)(b)	
C.POM Anthony Bomparola	Abuse: Police Officer Anthony Bomparola frisked § 87(2)(b)	
D.POM Anthony Bomparola	Abuse: Police Officer Anthony Bomparola searched § 87(2)(b)	
E.POM Anthony Bomparola	Abuse: Police Officer Anthony Bomparola searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM Moses Lebron	Abuse: Police Officer Moses Lebron searched the vehicle in which § 87(2)(b) was an occupant.	
G.POM Anthony Bomparola	Discourtesy: Police Officer Anthony Bomparola spoke discourteously to § 87(2)(b)	
H.POM Mohamed Elhanafi	Discourtesy: Police Officer Mohamed Elhanafi spoke discourteously to § 87(2)(b)	
I.POM Mohamed Elhanafi	Discourtesy: Police Officer Mohamed Elhanafi spoke discourteously to § 87(2)(b)	
J.POM Mohamed Elhanafi	Discourtesy: Police Officer Mohamed Elhanafi spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POM Mohamed Elhanafi	Abuse: Police Officer Mohamed Elhanafi threatened to arrest § 87(2)(b)	
L.POM Mohamed Elhanafi	Abuse: Police Officer Mohamed Elhanafi threatened to arrest § 87(2)(b)	
M.POM Mohamed Elhanafi	Abuse: Police Officer Mohamed Elhanafi threatened to arrest § 87(2)(b)	
N.POM Mohamed Elhanafi	Abuse: Police Officer Mohamed Elhanafi threatened to remove § 87(2)(b) to the hospital.	
O.POM Clint Elie	Abuse: Police Officer Clint Elie refused to provide his name and shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On December 6, 2017, at approximately 9:00 p.m. PO Anthony Bomparola and PO Moses Lebron of the 79<sup>th</sup> Precinct stopped § 87(2)(b) in his vehicle across the street from 854 Myrtle Avenue in Brooklyn for tinted windows (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) upon being stopped, furnished PO Bomparola with the Department of Correction identification of his late wife, § 87(2)(b). Upon seeing this identification, PO Bomparola ordered § 87(2)(b) out of the vehicle, allegedly saying to “get the fuck out” of his car (**Allegation B: Discourtesy**, § 87(2)(g) § 87(2)(b) frisked him (**Allegation C: Abuse of Authority**, § 87(2)(g) § 87(2)(b) and allegedly searched him (**Allegation D: Abuse of Authority**, § 87(2)(g) § 87(2)(b). He also allegedly stated of and about § 87(2)(b) “Come over here and check this shit out,” that he did not know “what the fuck” § 87(2)(b) was doing with a correction shield, and that he would not call a “fucking sergeant” (**Under Allegation B: Discourtesy**, § 87(2)(g) § 87(2)(b).

§ 87(2)(b) informed PO Bomparola that documentation allowing him to carry the shield was in the trunk of the car, and PO Bomparola searched the main body of his car (**Allegation E: Abuse of Authority**, § 87(2)(g) § 87(2)(b). During this search, § 87(2)(b) asked PO Bomparola if he needed permission to search his vehicle. PO Bomparola then searched the trunk of § 87(2)(b)s vehicle, and PO Lebron examined the contents of the trunk (**Allegation F: Abuse of Authority**, § 87(2)(g) § 87(2)(b). During this investigation, PO Lester and PO Fitzgerald, also of the 79<sup>th</sup> Precinct, briefly appeared on scene, and then left. Later, PO Clint Elie, PO Mohamed Elhanafi, and PO Greydy Mercedes, all of the 79<sup>th</sup> Precinct arrived on scene to assist with the stop.

As the investigation of § 87(2)(b) was occurring, § 87(2)(b) and § 87(2)(b) § 87(2)(b) all residents of the neighborhood, stood across the street, in front of 854 Myrtle Avenue, and asked the officers present if they were legally detaining § 87(2)(b) and searching his car. PO Bomparola allegedly told § 87(2)(b) to get her “ass” onto her side of the street, and referred to her walking as “waddling” (**Allegation G: Discourtesy**, § 87(2)(g) § 87(2)(b). PO Elhanafi allegedly told all of the bystanders present that he would, “put cuffs on [their] asses,” “arrest all,” “fucking lock [their] asses up.” He also allegedly stated, “I don’t care what the fuck you think you are, get the fuck out of here, or we’ll arrest your asses too,” and used the word “damn” (**Allegations H-J: Discourtesy**, § 87(2)(g) § 87(2)(b) **Allegations K-M: Abuse of Authority**, § 87(2)(g) § 87(2)(b). He allegedly stated that he would remove § 87(2)(b) to the hospital for psychiatric evaluation (**Allegation N: Abuse of Authority**, § 87(2)(g) § 87(2)(b). PO Elie allegedly refused to provide his name and shield number to § 87(2)(b) (**Allegation O: Abuse of Authority**). § 87(2)(g), § 87(4-b) § 87(2)(b).

PO Bomparola, PO Lebron, PO Mercedes, and PO Elhanafi were equipped with body-worn cameras at the time of the incident. PO Elie was not equipped with a body-worn camera at the time of the incident, and has not been equipped subsequently with a body-worn camera (Board Reviews 4, 9, 29, and 30).

§ 87(2)(b) was arrested for second-degree criminal impersonation of a public servant.

## **Findings and Recommendations**

### **Allegation (A) Abuse of Authority: Police Officer Anthony Bomparola stopped the vehicle in which § 87(2)(b) was an occupant.**

It is not in dispute that PO Bomparola and PO Lebron stopped the vehicle that § 87(2)(b) was driving.

§ 87(2)(b) stated that the windows of his vehicle have retractable sunshades. He also stated that these sunshades resemble dark window tints (Board Review 1).

PO Bomparola stated that he made the decision to stop the vehicle after he saw that the vehicle had excessive tints on its windows (Board Review 2).

People v. De Bour 40 N.Y. 2d 210, 1976 allows officers to stop individuals for whom they have reasonable suspicion are engaged in criminality (Board Review 3). Section 375 (12-a) of the New York State Vehicle and Traffic Law prevents window tints that prevent more than seventy percent of light from passing through the windows of the vehicle (Board Review 11).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### **Allegation (C): Police Officer Anthony Bomparola frisked § 87(2)(b)**

### **Allegation (D): Police Officer Anthony Bomparola searched § 87(2)(b)**

It is undisputed that § 87(2)(b) upon being stopped by PO Bomparola, he showed PO Bomparola his late wife, § 87(2)(b) correction shield. It is not in dispute that immediately after § 87(2)(b) did this, § 87(2)(b) was ordered out of his vehicle and frisked by PO Bomparola.

§ 87(2)(b) stated in his CCRB statement that PO Bomparola frisked his arms, chest, groin, waist, and legs. He also stated that PO Bomparola placed his hands in his front pockets (Board Review 1).

PO Bomparola stated in his interview that he “probably” frisked “the usual parts,” which were § 87(2)(b) s armpits, pockets, waist, and legs. When asked if he had any belief that § 87(2)(b) was armed, PO Bomparola stated, “You mean, like a bulge or something? No.” He denied that anything on § 87(2)(b) s person evinced that he was armed (Board Review 2). He did not recall searching § 87(2)(b) (Board Review 19).

PO Bomparola’s BWC footage does not show whether he only frisked § 87(2)(b) or whether he searched him as well (Board Review 4). PO Lebron’s BWC footage is similarly inconclusive (Board Review 9). PO Bomparola frisked § 87(2)(b) at approximately 9:02 p.m., and he directed other officers to handcuff § 87(2)(b) at approximately 9:31 p.m., after he had already taken a number of steps, including searching § 87(2)(b) s car and calling the Department of Correction, to verify whether he was a corrections officer.



bomparolafrisk.mp4

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lebronfrisk.mp4

People v. De Bour 40 N.Y. 2d 210, 1976 allows officers to frisk individuals when they have a reasonable suspicion that the person is a danger to the officer by virtue of carrying a weapon (Board Review 3).

PO Bomparola denied seeing any indication on § 87(2)(b)'s person that § 87(2)(b) was armed. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (E) Abuse of Authority: Police Officer Anthony Bomparola searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (F) Abuse of Authority: Police Officer Moses Lebron searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that shortly after § 87(2)(b) was frisked, his vehicle was searched. It is undisputed that § 87(2)(b) told officers, after he was ordered out of the vehicle, that there was Department of Correction paperwork in his trunk.

During his phone statement, § 87(2)(b) said that he initially allowed officers to go into his trunk, where he was holding his Department of Correction paperwork. He then revoked consent when PO Bomparola insisted on searching the main body of the car, and then officers searched his trunk (Board Review 5). During his initial in-person statement, § 87(2)(b) said that only PO Lebron went into the trunk of his vehicle, and only after he gave him permission to do so. After watching body-worn camera footage, however, § 87(2)(b) stated that he revoked permission, and that the officers entered the trunk without his consent (Board Review 1).

PO Bomparola stated that he went into the main body of the vehicle after frisking § 87(2)(b) and he stated that he did so to search for weapons. He said that upon approaching the car, he could see into the car, and could see outlines of the contents of the vehicle because the windows were down upon PO Bomparola's approach. He said that he saw "shadows," but could not describe the shape of the shadows. He said that he did not see anything in the main body of the vehicle that indicated that there was a firearm there. PO Bomparola said that he searched the "lungable, grabbable" area of the car, which he described as the entirety of the body of the vehicle: "Basically the entire inside of the car is somewhere you could lunge or grab at." He said that he "probably" searched the floor, center console, and glove compartment (Board Review 2).

PO Bomparola confirmed that he searched the trunk of the vehicle after he searched the main body of § 87(2)(b)'s vehicle. He stated that he searched § 87(2)(b)'s trunk to locate the documents that § 87(2)(b) indicated would prove that he was a correction officer. He stated that he placed § 87(2)(b) under arrest once he conducted a secondary investigation, consisting of phone calls to the Department of Correction, that confirmed that § 87(2)(b) was not an active

correction officer (Board Review 2). It was after these calls that § 87(2)(b) was handcuffed (Board Review 4). PO Bomparola stated that if his investigation had proven that § 87(2)(b) was a correction officer, then he would have released him (Board Review 2).

PO Lebron stated that he examined the contents of § 87(2)(b)'s trunk, but he did not remember where he did so—whether it was within the confines of the trunk itself, or whether the contents he was examining had been removed. He did not have any part in initially entering the trunk.

PO Lebron asserted that he had probable cause to search the trunk once § 87(2)(b) provided an identification that did not belong to him: “We had probable cause to arrest, which gave us the search of the vehicle.” He indicated that § 87(2)(b)'s telling the officers where the documents were amounted to § 87(2)(b) consenting to the vehicle search (Board Review 8).

PO Bomparola's body-worn camera footage showed PO Bomparola declaring to § 87(2)(b) that he is about to search his car before he entered the main body of the vehicle. § 87(2)(b) said “You gotta ask permission to search my car,” to which PO Bomparola responded, “I don't.” PO Bomparola the front seat of the vehicle. His camera is obscured by his jacket during most of the search of the interior of the vehicle.

He then entered and searched the trunk of the vehicle. § 87(2)(b) was handcuffed over 20 minutes after this search was initiated (Board Review 4 and 6). Once PO Elhanafi, PO Mercedes, and PO Elie arrived on scene, PO Lebron removed some of the contents of the trunk to show to PO Elie (Board Review 9).



lloydsearch.mp4



bomparolasearch1.mp4



lebronsearch.mp4

For the search of the main body of the vehicle. PO Bomparola invoked the concept of a protective vehicle search, that is, one designed to remove dangerous articles from a vehicle. People v. Newman 96.A.D. 3d 34 (2012) limits a protective search of a vehicle to when officers perceive that there is a “substantial likelihood” of a weapon that poses a threat to their safety (Board Review 7). In addition, protective vehicle searches extend only to where there is a substantial likelihood that there is a weapon, and not to the entire interior body of a car.

In regards to the search of the trunk, officers may indeed search an arrested driver's vehicle without a warrant if they have probable cause, “provided there is a nexus between the arrest and the probable cause for the search” per People v. Anderson 104 A. D. 3d 968 (2013) (Board Review 10).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g) He stated that the windows of the car were down, which allowed him to see into the vehicle. Furthermore, at the time, § 87(2)(b) was not inside his vehicle, and consequently was not within reach of any weapons that he could have used against PO Bomparola.

PO Bomparola also admitted that he likely searched the entire “lungable, grabbable area” of the car, which he defined as the whole interior of the car. He could not and did not specifically limit his search of the car to where he thought there were weapons. Furthermore, he did not specify where any potential weapon could be.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

PO Bomparola, PO Lebron, and § 87(2)(b) all stated that § 87(2)(b) stated to the officers that he had exculpatory evidence in his trunk, that is, documents that showed that he was a correction officer. Both PO Bomparola and PO Lebron stated that the search of the trunk of the vehicle was conducted to examine this evidence. § 87(2)(g)

PO Bomparola stated that had there been evidence during the course of this investigation that showed that § 87(2)(b) was a correction officer, then § 87(2)(b) would have been released. At the time that the trunk was searched, § 87(2)(b) was not in handcuffs, and a supervisor had not been contacted to verify the arrest. § 87(2)(b) was handcuffed, and the process of conclusively taking him into custody, was initiated over 20 minutes after the search of the trunk started. PO § 87(2)(b), § 87(2)(g)

[REDACTED]  
[REDACTED]  
[REDACTED]. Furthermore, PO Bomparola’s BWC footage showed § 87(2)(b) retracting consent to search his car.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation (B) Discourtesy: Police Officer Anthony Bomparola spoke discourteously to**

§ 87(2)(b)

**Allegation (G) Discourtesy: Police Officer Anthony Bomparola spoke discourteously to**

§ 87(2)(b)

**Allegation (H) Discourtesy: Police Officer Mohamed Elhanafi spoke discourteously to**

§ 87(2)(b)

**Allegation (I) Discourtesy: Police Officer Mohamed Elhanafi spoke discourteously to** § 87(2)(b)

**Allegation (J) Discourtesy: Police Officer Mohamed Elhanafi spoke discourteously to** § 87(2)(b)

**Allegation (K) Abuse of Authority: Police Officer Mohamed Elhanafi threatened to arrest**

§ 87(2)(b)

**Allegation (L) Abuse of Authority: Police Officer Mohamed Elhanafi threatened to arrest**

§ 87(2)(b)

**Allegation (M) Abuse of Authority: Police Officer Mohamed Elhanafi threatened to arrest**

§ 87(2)(b)

**Allegation (N) Abuse of Authority: Police Officer Mohamed Elhanafi threatened to remove § 87(2)(b) to the hospital.**

It is undisputed that PO Elhanafi, PO Elie, and PO Mercedes arrived on scene to assist PO Bomparola during the vehicle stop. It is undisputed that residents of the neighborhood, § 87(2)(b), and § 87(2)(b) saw what was happening, and began speaking with officers from across the street. It is undisputed that PO Elhanafi, PO Bomparola, and PO Elie responded to these individuals. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) in his initial statement, said that PO Bomparola was liberally using profanity during the incident. He claimed that PO Bomparola told him to “get the fuck out” of his vehicle, said to other officers, “come over here and check this shit out,” that he did not know “what the fuck” § 87(2)(b) was doing with a correction shield, and that he would not call a “fucking sergeant.” He stated that PO Elhanafi said that he would “put cuffs on [their] asses,” “arrest [them] all,” “fucking lock [their] asses up,” to the bystanders, and that he also said “I don’t care what the fuck you think you are, get the fuck out of here, or we’ll arrest your asses too.” He viewed body-worn camera footage during his interview, and then denied that officers had used profanity, but said that their demeanor had been rough, which affected his recollection of the incident (Board Review 1).

§ 87(2)(b) alleged that PO Bomparola told § 87(2)(b) to get her “ass” onto her side of the street, and referred to her walking as “waddling.” She denied that any officer spoke discourteously or threatened her (Board Review 12).

§ 87(2)(b) alleged that PO Elhanafi used the word “damn” in speaking with her and § 87(2)(b) threatened to arrest § 87(2)(b) and threatened to remove § 87(2)(b) to a psychiatric hospital (Board Review 13).

§ 87(2)(b) also stated that PO Elhanafi said “damn” to her during the incident. She denied other profanity, or that any officer threatened to arrest her or threatened to remove her to a psychiatric hospital (Board Review 14).

All of the officers interviewed denied that they or their fellow officers made any of these statements (Board Reviews 2, 8, 15, 16, 17, 19, and 20).

PO Bomparola’s and PO Elhanafi’s body-worn camera footage shows them speaking with both § 87(2)(b) and all of the bystanders present. This footage conclusively does not show the use of any profanity towards any civilians during the incident (Board Reviews 4 and 29).



elhanafidicsourtesy.mp4





bomparoladiscountesy.mp4

§ 87(2)(g)

**Allegation (O) Abuse of Authority: Police Officer Clint Elie refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(b) alleged that she asked PO Elie for his name and shield number, and that PO Elie did not provide it upon request. No other civilian repeated this allegation (Board Review 13).

PO Elie denied that he or any other officer refused to provide their information when asked (Board Review 20). He was the only officer on scene at the time who was not wearing a body camera, and he was standing too far from the officers to be audible on their cameras.

§ 87(2)(g)

§ 87(2)(b), § 87(4-b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 22).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 23).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 24).
- § 87(2)(b)
- PO Bomparola has been a member of service for four years, and has been a subject in two prior complaints and six prior allegations, of which four were substantiated (Board Review 26). § 87(2)(g)
  - Case 201704022 involved substantiated allegations of a vehicle stop, a vehicle search, and a frisk. The Board recommended Command Discipline A.

- Case 201707955 involved a substantiated allegation of a refusal to provide name and shield number allegations. The Board recommended command-level instructions.
- PO Elhanafi has been a member of service for four years and has been a subject in one case and one allegation, which was not substantiated (Board Review 26). § 87(2)(g)
- PO Lebron has been a member of service for four years and has been a subject in one case and three allegations, none of which were substantiated (Board Review 26). PO § 87(2)(g)
- PO Elie has been a member of service for four years and has been a subject in one case and one allegation, which was not substantiated (Board Review 26).

#### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- § 87(2)(b)
- On April 23, 2018, the New York City Office of the Comptroller confirmed that no civilians in this case filed a notice of claim (Board Review 28).

#### **Allegations Not Pleaded**

**Abuse:** § 87(2)(b) alleged that PO Elie searched into the trunk of his vehicle. The investigation determined, however, that any incursion PO Elie may have made into § 87(2)(b)'s trunk occurred after PO Bomparola and PO Lebron had already opened and searched the trunk. Furthermore, body-worn camera footage revealed that the incursion consisted of PO Elie placing § 87(2)(b)'s documents back into his trunk after PO Lebron had pass them along to him. Because PO Elie did not initiate or participate in the initial search of § 87(2)(b)'s trunk, and simply placed documents back into the trunk after PO Lebron showed them to him, the investigation did not plead a vehicle search allegation against PO Elie.

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Squad #9

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Title & Name

\_\_\_\_\_  
Date